

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1715

Introduced by Committee on Judiciary (Corbett (Chair), Dutra, Hancock, Jackson, Laird, Longville, Montanez, Steinberg, and Vargas)

(Coauthors: Senators Burton, Escutia, and Kuehl)

February 26, 2003

An act to amend Section 1281 of the Code of Civil Procedure, and to add Section 12952 to the Government Code, relating to employment arbitration.

LEGISLATIVE COUNSEL'S DIGEST

AB 1715, as amended, Committee on Judiciary. Employment arbitration agreements.

Existing law provides that written agreements to submit controversies to arbitration are valid and enforceable.

This bill would invalidate ~~pre-dispute~~ arbitration agreements between employers and employees that relate to employment practices covered by the Fair Employment and Housing Act (FEHA) *that are required as a condition of employment or continued employment*. It would further establish that on and after January 1, 2004, ~~it is an unlawful employment practice to require an employee to waive rights or procedures under the FEHA, that a~~ any waiver of rights or procedures under the FEHA must be knowing, voluntary, and not made as a condition of employment or continued employment, ~~and that a waiver of rights or procedures under the FEHA required as a condition of employment or continued employment prior to January 1, 2004, may be deemed involuntary as~~

to any FEHA claim that arises on or after January 1, 2004. The bill also provides that an employer has the burden to prove that a waiver or arbitration agreement was knowing, voluntary, and not a condition of employment or continued employment.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that it is the
2 public policy of the State of California to ensure that employees
3 have the full benefit of the rights and ~~protections~~ *procedures*
4 contained in the Fair Employment and Housing Act and that
5 employees not be deprived of those rights ~~and or~~ protections by the
6 use of coerced and involuntary waivers. It is the purpose of this act
7 to ensure that any agreement between an employer and employee
8 *to waive any rights or procedures under the FEHA, including any*
9 *agreement to arbitrate any claim arising under the FEHA is a*
10 ~~matter of~~, *is a matter of voluntary* consent and not coercion.

11 The Legislature finds and declares that involuntary ~~predispute~~
12 arbitration provisions that limit an employee's access to the
13 Department of Fair Employment and Housing ~~as a condition of~~
14 ~~employment and~~ or limit the authority of the department to
15 investigate and pursue meritorious claims of discrimination *as a*
16 *condition of employment or continued employment* are against the
17 public policy of this state.

18 SEC. 2. Section 1281 of the Code of Civil Procedure is
19 amended to read:

20 1281. (a) Except as provided in subdivision (b), a written
21 agreement to submit to arbitration an existing controversy or a
22 controversy thereafter arising is valid, enforceable, and
23 irrevocable, save upon grounds that exist for the revocation of any
24 contract.

25 (b) Subdivision (a) does not apply to any ~~predispute~~ arbitration
26 agreement between an employer and employee that violates
27 Section 12952 of the Government Code.

28 SEC. 3. Section 12952 is added to the Government Code, to
29 read:

30 12952. (a) It is an unlawful employment practice, on or after
31 January 1, 2004, for an employer, ~~as defined in subdivision (d) of~~

~~Section 12926, to require an employee or potential employee to waive subject to this part to require as a condition of employment or continued employment that an employee or potential employee waive any rights or procedures provided for in this chapter part, including, but not limited to, the right to file a complaint with the department pursuant to Section 12960 or the right to file and pursue a civil action pursuant to Section 12965, as a condition of employment or continued employment.~~

(b) It is an unlawful employment practice, on or after January 1, 2004, for an employer, as defined in subdivision (d) of Section 12926, to refuse to hire, harass, discharge, expel, or otherwise discriminate against an employee or potential employee because he or she refuses to waive rights or procedures provided for in this ~~chapter part~~.

(c) Any waiver of rights or procedures provided under the Fair Employment and Housing Act must be knowing, voluntary, and not made a condition of employment or continued employment.

~~(1) Any waiver of rights or procedures provided under the Fair Employment and Housing Act~~

Any such waiver, including an agreement to arbitrate a FEHA claim, that is required as a condition of employment or continued employment in violation of subdivision (a), shall be deemed void involuntary, unconscionable, against public policy, and unenforceable.

~~(2) Any waiver of rights or procedures provided under the Fair Employment and Housing Act, including an agreement to arbitrate a FEHA claim, required as a condition of employment or continued employment in any contract entered into prior to January 1, 2004, may be deemed involuntary as to any FEHA claim that arises on or after January 1, 2004, and if so found, is unconscionable, against public policy, and unenforceable.~~

(d) The employer has the burden of proving that any waiver ~~under subdivision (a), (b), or (c) of rights or procedures provided under the Fair Employment and Housing Act, including any agreement to arbitrate a claim under the FEHA, was knowing, voluntary, and not made a condition of employment or continued employment, or that the arbitration agreement under subdivision (a), (b), or (c) was knowing, voluntary, and not made a condition of employment or continued employment.~~ *This subdivision shall apply to any agreement to arbitrate an FEHA claim that is entered*

- 1 *into, altered, modified, renewed, or extended on or after January*
- 2 *1, 2004.*

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